

1 Michael J. Nuñez, Esq.
Nevada Bar No. 10703

2 John H. Podesta, Esq.
Nevada Bar No. 7487

3 **MURCHISON & CUMMING, LLP**

6900 Westcliff Drive, Suite 605

4 Las Vegas, Nevada 89145

Telephone: (702) 360-3956

5 Facsimile: (702) 360-3957

mnunez@murchisonlaw.com

6 jpodesta@murchisonlaw.com

7 Attorneys for Plaintiff

DISCOVER PROPERTY AND

8 CASUALTY INSURANCE COMPANY

9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF NEVADA**

13 DISCOVER PROPERTY AND
14 CASUALTY INSURANCE
COMPANY, an Illinois Corporation,

15 Plaintiffs,

16 vs.

17 WILLIAM SCUDIER, an Individual;
18 PATRICK DILLON, a Minor by and
through his Mother and Guardian ad
Litem JOANN DILLON.

19 Defendants.
20

CASE NO.

**COMPLAINT FOR
DECLARATORY RELIEF**

21
22 Plaintiffs DISCOVER PROPERTY AND CASUALTY INSURANCE
23 COMPANY alleges:

24 1. Plaintiff DISCOVER PROPERTY & CASUALTY INSURANCE
25 COMPANY ("DISCOVER") is and was at all times mentioned a corporation
26 incorporated under the laws of the State of Illinois with its principal place of business
27 in St. Paul, Minnesota.

28 ///

1 2. Defendant WILLIAM SCUDIER("SCUDIER") is and was at all times
2 mentioned an individual residing in Las Vegas, Nevada.

3 3. Defendant PATRICK DILLON, a Minor by and through his Mother and
4 Guardian ad Litem JOANN DILLON, is an individual, who is, at all material times a
5 resident of Las Vegas, Nevada("DILLON").

6 4. The jurisdiction of this Court over the subject matter of this action is
7 predicated on 28 USC 1332. The amount in controversy exceeds \$75,000.00 exclusive
8 of interest and costs. All defendants reside in this district and the claim arose in this
9 district.

10 5. At the time of the incident described below, there were two Commercial
11 General Liability Policies numbered D227P00932, and D227P03602 underwritten by
12 DISCOVER and issued to Southwest Real Estate Purchasing Group S-52(Discover
13 Policies). Southwest Real Estate Purchasing Group S-52 in turn provided a
14 memorandum of property and liability insurance to B&R Property Management, Inc.
15 and Victory Village 2004 LLC, pursuant to an "Insured, Location and Lender
16 Endorsement". Victory Village 2004 LLC and B&R Property Management, Inc.,
17 claim to be Named Insured's on the Discover Policies. A copy of the Discover Policies
18 are attached as **Exhibit "A"** and **Exhibit "B"** and incorporated as through fully set
19 forth herein.

20 6. The Discover Policies contains the following pertinent terms and
21 conditions in the ISO CG 00 01 07 98 general form:

22 Throughout this policy the words "you" and "your" refer to the Named
23 Insured shown in the Declarations, and any other person or
24 organization qualifying as a Named Insured under this policy. The
words "we", "us" and "our" refer to the company providing this
insurance.

25 The word "insured" means any person or organization qualifying as
26 such under Section II Who Is An Insured.

27 Other words and phrases that appear in quotation marks have special
28 meaning. Refer to Section V Definitions.

///

SECTION I COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:...

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; ...

2. Exclusions

This insurance does not apply to:...

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does

1 not apply. We may, at our discretion, investigate any offense
2 and settle any claim or "suit" that may result. But:

3 ...

4 No other obligation or liability to pay sums or perform
5 acts or services is covered unless explicitly provided for under
6 Supplementary Payments Coverages A and B.

7 **b.** This insurance applies to "personal and advertising injury"
8 caused by an offense arising out of your business but only if the
9 offense was committed in the "coverage territory" during the
10 policy period.

11 **2. Exclusions**

12 This insurance does not apply to:

13 **a.** "Personal and Advertising injury":

14 (1) caused by or at the direction of the insured with the
15 knowledge that the act would violate the rights of another and
16 would inflict "personal and advertising injury".

17 ...

18 (4) arising out of a criminal act committed by or at the
19 direction of the insured.

20 **SECTION II WHO IS AN INSURED**

21 **1.** If you are designated in the Declarations as:

22 ...

23 **c.** A limited liability company, you are an insured. Your
24 members are also insureds, but only with respect to the
25 conduct of your business. Your managers are insureds, but
26 only with respect to their duties as your managers.

27 ...

28 **2.** Each of the following is also an insured:

a. Your "employees", other than either your "executive
officers,...or your managers...but only for acts within the scope
of their employment by you or while performing duties related
to the conduct of your business. ...

29 **SECTION V DEFINITIONS...**

30 **3.** "Bodily injury" means bodily injury, sickness or disease
31 sustained by a person, including death resulting from any of these at
32 any time.

1 4. "Coverage territory" means:

2 a. The United States of America (including its territories and
3 possessions), Puerto Rico and Canada;

4 ...

5 5. "Employee" includes a "leased worker". "Employee" does not
6 include a "temporary worker".

7 ...

8 13. "Occurrence" means an accident, including continuous or
9 repeated exposure to substantially the same general harmful
10 conditions.

11 14. "Personal and advertising injury" means injury, including
12 consequential "bodily injury", arising out of one or more of the
13 following offenses:

14 a. False arrest, detention or imprisonment;

15 ...

16 c. The wrongful eviction from, wrongful entry into, or invasion
17 of the right of private occupancy of a room, dwelling or premises that
18 a person occupies, committed by or on behalf of its owner, landlord or
19 lessor;

20 ...

21 e. Oral or written publication, in any manner, of material that
22 violates a person's right of privacy;

23 In addition, the Discover Policies contain an endorsement entitled **ABUSE**
24 **OR MOLESTATION EXCLUSION**, which provides, in pertinent part:

25 This endorsement modifies insurance provided under the following:

26 **COMMERCIAL. GENERAL LIABILITY COVERAGE PART**

27 The following exclusion is added to Paragraph 2., Exclusions of
28 Section I — Coverage A - Bodily Injury And Property Damage
Liability and Paragraph 2., Exclusions of Section I — Coverage B —
Personal And Advertising Injury Liability:

 This insurance does not apply to "bodily injury", "property damage"
or "personal and advertising injury" arising out of:

1. The actual or threatened abuse or molestation by anyone of any
person while in the care, custody or control of any insured, or

2. The negligent:

- a.. Employment;
 - b Investigation;
 - c. Supervision;
 - d. Reporting to the proper authorities, or failure to so report; or
 - e. Retention;
- of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by Paragraph 1. above

7. Plaintiffs are informed and believe that, in or about 2004, defendant SCUDIER was employed by either VICTORY VILLAGE or B&R. In October of 2004, Dillon moved into Apartment 627 at Victory Village. According to the complaint filed by Dillon, beginning in 2005, SCUDIER began an improper relationship with Patrick Dillon, and in January of 2006, began an illicit sexual relationship with Patrick Dillon. According to the complaint, this illicit and illegal relationship included the allegation that SCUDIER performed oral and anal sex on Patrick Dillon, with frequency, through at least August of 2006. A true and correct copy of the Second Amended (and currently operative) Complaint in the case of *Patrick Dillon etc., v. William Scudier, et al.*, Clark County District Court Case number A-10-609918-C is attached hereto as **Exhibit C** ("Underlying Action").

8. The specific causes of action against SCUDIER are as follows:

Battery – wherein it is alleged “SCUDIER harmfully and offensively touched PATRICK by performing sexual acts on PATRICK” and “SCUDIER intentionally performed sexual acts on PATRICK.” **Exhibit C**, Underlying Action at ¶¶28 & 29;

Assault – wherein it is alleged “PATRICK was reasonably placed in fear of imminent harm or offensive conduct for the duration of SCUDIER’s

1 sexual relation with PATRICK” and “PATRICK’S apprehension was
2 reasonable because SCUDIER already had demonstrated a willingness to
3 perform sexual acts on PATRICK.” **Exhibit C**, Underlying Action at
4 ¶¶34 & 35;

5
6 **Intentional Infliction of Emotional Distress** – wherein it is alleged
7 “SCUDIER sexual acts upon PATRICK were extreme and outrageous”
8 and “PATRICK suffered extreme emotional distress as a result of
9 SCUDIER’s conduct including uncertainty about his sexual orientation
10 and a skewed perception of relationships between adult males and
11 adolescent boys.” **Exhibit C**, Underlying Action at ¶¶38 & 39;

12
13 **False Imprisonment** – wherein it is alleged “SCUDIER restrained
14 PATRICK within SCUDIER’s apartment without legal justification or
15 consent” and “The lack of legal justification and consent is evidenced by
16 the repeated protestations of PATRICK’S mother, JOANN DILLON,
17 against her son spending time with SCUDIER” and “SCUDIER knew that
18 PATRICK was being physically abused at home and therefore was
19 unlikely to leave SCUDIER’s apartment” and “At some point in February
20 2006, SCUDIER took PATRICK to the Fiesta Hotel and Casino in
21 Henderson, Nevada” and “At some point in June 2006, SCUDIER took
22 PATRICK to the Green Valley Ranch Resort, Spa & Casino in
23 Henderson, Nevada” and “At some point in June 2006, SCUDIER took
24 PATRICK to the Longhorn Hotel Casino in Las Vegas, Nevada” and
25 “At some point in August 2006⁴ SCUDIER took PATRICK on a trip to
26 Zion National Park in Utah” and “These trips were without legal
27 justification” and “PATRICK could not reasonably have exited or escaped
28

1 these premises, which were miles from his home.” **Exhibit C**, Underlying
 2 Action at ¶¶42-50.

3
 4 9. SCUDIER, VICTORY VILLAGE and B&R tendered their respective
 5 defenses and requested indemnity in the Underlying Action to plaintiffs under the
 6 Discover Policies. Plaintiffs undertook SCUDIER, VICTORY VILLAGE and B&R's
 7 defense in the Underlying Action under a reservation of rights, including the right to
 8 file this action seeking a declaration of the Court that no coverage exists for the claims
 9 asserted against SCUDIER, VICTORY VILLAGE and B&R under the terms and
 10 provisions of the Discover Policies.

11 10. On April 4, 2012 summary judgment was entered on behalf of defendants
 12 VICTORY VILLAGE and B&R in the underlying matter. A true and correct copy of
 13 the Notice of Entry of Order in the Underlying matter is attached hereto as **Exhibit D**.

14 11. The Discover Policies only applies to the extent that there is a claim
 15 against SCUDIER, B&R or VICTORY VILLAGE for “bodily injury” caused by an
 16 “occurrence.” The acts of SCUDIER are non-accidental, and therefore injuries to
 17 Patrick Dillon resulting therefrom cannot be the result of an “occurrence”.

18 12. The Discover Policies’ coverage excludes injuries that are either
 19 “expected or intended” by the Insured, and specifically exclude coverage for damages
 20 because of “bodily injuries” caused by ABUSE OR MOLESTATION. These
 21 exclusions are clear, prominent and enforceable, and exclude coverage under the
 22 policy for any injury caused to DILLON that is the subject of the Underlying Lawsuit.

23 **FIRST CLAIM FOR RELIEF**

24 **(Against All Defendants for Declaratory Relief)**

25 13. Plaintiffs reassert and re-allege the allegations contained in Paragraphs 1
 26 through 11. above, and incorporate them as if they were fully set forth here.

27 14. A controversy has arisen and exists by and between plaintiffs on the one
 28 hand, and defendants on the other, insofar as plaintiffs maintain that no coverage exists

1 under the Discover Policies for the claims DILLON asserts against SCUDIER in the
2 Underlying Action.

3 15. Plaintiffs are informed and believe that defendants maintain to the
4 contrary that coverage exists under the Discover Policies for the claims DILLON
5 asserts against SCUDIER in the Underlying Action.

6 16. Plaintiffs are also informed and believe that DILLON, through their
7 attorney, may attempt to assert an entitlement to insurance benefits under the Discover
8 Policies by virtue of SCUDIER's status as an insured, and as potential judgment
9 creditors of SCUDIER.

10 17. Plaintiffs dispute any claims by DILLON against SCUDIER to any
11 entitlement to funds from plaintiffs via the Discover Policies.

12 18. Therefore, an actual justiciable controversy presently exists between
13 plaintiffs and DILLON and SCUDIER relating to whether any coverage or potential
14 for coverage exists under the Discover Policies for claims asserted by DILLON against
15 SCUDIER in the Underlying Action, and a declaration of this Court is necessary to
16 determine the rights and obligations of DISCOVER, DILLON, and/or SCUDIER
17 under the Discover Policies.

18 WHEREFORE, DISCOVER prays for judgment against Defendants and each of
19 them as follows:

20 1. For a declaration that no coverage or potential for coverage exists under
21 the terms and provisions of the Discover Policies for the claims by DILLON against
22 SCUDIER in the Underlying Action.

23 2. For a declaration that DISCOVER has no duty to defend or indemnify
24 claims by DILLON against SCUDIER in the Underlying Action.

25 3. For judgment against SCUDIER for reimbursement of monies plaintiffs
26 expended to date in defending and/or indemnifying SCUDIER against claims DILLON
27 asserted against SCUDIER in the Underlying Action in an amount to be established at
28 trial, including interest at the legal rate.

1 4. For the costs incurred in this action.

2 5. For such other and further relief as the Court may deem just and proper.

3
4 DATED: May 17, 2012

MURCHISON & CUMMING, LLP

5
6 By:  #11321 FOR

Michael J. Nuñez, Esq.

Nevada Bar No. 10703

John H. Podesta, Esq.

Nevada Bar No. 7487

Attorneys for DISCOVER PROPERTY &
CASUALTY INSURANCE COMPANY